

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No. 4157 of 1998

This writ petition is filed seeking a declaration that the amendment issued in G.O.Ms.No. 326, General Administration (Ser-B) Department, dated 17-6-1981 by the 1st respondent as unconstitutional and for a further declaration that the orders of Director of Horticulture, 4th respondent, dated 14-11-1996 as confirmed by his order dated 10-1-1998 as violative of Articles 14 and 16 of the Constitution and consequently to quash the orders of the 4th respondent whereunder the seniority ranks of the petitioners in the cadre of Superintendents were brought below the rank of the 5th respondent.

It is to be seen that the petitioners are aggrieved by the amendment issued in G.O.Ms.No.326 General Administration (Ser-B) Department, dated 17-6-1981 by the Government and also the consequential orders passed by the 4th respondent herein in the matter of fixation of seniority of Superintendents in Director of Horticulture Department. In the counter affidavit filed by the 1st respondent it is asserted that the petitioners instead of approaching this Court under Article 226 of the Constitution of India, should have approached the A.P. Administrative Tribunal as it has ample powers to test the vires of the amended provisions brought about by the Government to the G.O. dated 17-6-1981. It is also asserted by respondents 2 to 4 that the writ petition is not maintainable since this Court has no initial jurisdiction and in a matter like this the A.P. Administrative Tribunal is fully pouched with the powers to test the vires of the amended provisions issued by the government. In support of this the learned counsel appearing for the respondents relied upon a decision of the Apex Court in L. CHANDRA KUMAR vs. UNION OF INDIA (1997 SC 1125), wherein it was held as follows:

“Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provisions was not in question in Dr.Mahabal Ram’s case (1994(2)SCC 401), we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of which must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a single Member Bench or a bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.”

In view of the law laid down by the Supreme Court and by the very nature of the lis, this Court has no initial jurisdiction as held in L. CHANDRA KUMAR’s case.

The writ petition is, therefore, dismissed as not maintainable.
No costs.

10th August, 2005

BJ/